FILE COPY

FILED
JAN 16 1933
CHARLES ELMORE CROP
CLERK

IN THE

Supreme Court of the United States

NO. 388

OCTOBER TERM, 1932.

LETCHER SPICER, by SAM SPICER, Guardian and Committee,
Petitioner,

vs.

J. BRYAN SMITH, Special Deputy Banking Commissioner,
Respondent.

BRIEF ON BEHALF OF J. N. PEYTON, COMMISSIONER OF BANKS OF THE STATE OF MINNESOTA, AMICUS CURIAE.

WILLIAM H. OPPENHEIMER,
FRANK C. HODGSON,
MONTREVILLE J. BROWN,
Special Counsel for J. N. Peyton,
Commissioner of Banks of the
State of Minnesota,
W-1781 First Nat. Bk Bldg.,
Saint Paul, Minnesota.

INDEX.

Page.

I.

THE LAW.

1. Kentucky and Minnesota cases are in conflict 1
2. Interest of Commissioner of Banks of Minnesota in controversy 3
3. Payment to a guardian is payment to incompetent beneficiary and discharges obligation of the United State with respect to such payment; claim of guardian on account of moneys deposited in failed bank general one and not entitled to preference.. 4
4. Theory that money paid a guardian continues money of the United States until devoted to use of incompetent beneficiary erroneous 5
   (1) No express provision in law to this effect. 5
   (2) No language in law justifying implication of intention to this effect 5
   (3) Language of the Act clearly negatives such intention 5

II.

PRACTICAL CONSIDERATIONS 13

TABLE OF CASES.

Page.

UNITED STATES:

Lamar v. Miscow, 112 U. S. 452, 28 Fed. 751, 5 Sup. Ct. 221 4

Maclay v. The Equitable Life Insurance Society of the United States, 152 U. S. 499, 38 L. Ed. 528, 14 Sup. Ct. 678 5

Taylor et al., v. Bemiss, 110 U. S. 42, 28 L. Ed. 64; 3 Sup. Ct. 441 4

FEDERAL:

Birmingham v. U. S., (C. C. A. 8th), 4 Fed. (2d) 508.. 16
Sternfield v. U. S., (D. C. N. D., N. Y.), 32 Fed. (2d) 789 16

STATE:

American State Bank v. Jone, 184 Minn. 498, 239 N. W. 144 .. 2
Anderson v. Olivia State Bank et al., ... Minn. ....., 243 N. W. 398 .. 3, 5, 15, 16
Butler v. Cantley, (Mo. App.), 47 S. W. (2d) 258..... 5
Hoff v. First State Bank, 174 Minn. 36, 218 N. W. 238... 2
McIntosh v. Dill, ... Okla. ....., 205 Pac. 917..... 16
Northwestern Fuel Co. v. First Stock State Bank, 182 Minn. 276, 234 N. W. 304 .. 2
Puffenbarger v. Charter, ... W. Va. ....., 165 S. E. 541 .. 6, 11
Shippee v. Commercial Trust Company (Conn.), 161 Atl. 775 .. 6
Snicker v. Byers, 176 Minn. 541, 224 N. W. 152..... 16
State ex rel. Sorenson v. Security Bank, 121 Neb. 521, 237 N. W. 620 .. 5
State ex rel. Spillman v. First State Bank, 121 Neb. 515, 237 N. W. 623 .. 5
State ex rel. Smith v. Shawnee County Commissioners, 132 Kan. 233, 294 Pac. 915 (1931, Certiorari denied, 283 U. S. 855, 75 L. Ed. 1462, 51 Sup. Ct. 648)..... 6

IN THE

Supreme Court of the United States

NO. 388

OCTOBER TERM, 1932.

LETCHER SPICER, by SAM SPICER, Guardian and Committee,
Petitioner,

vs.

J. BRYAN SMITH, Special Deputy Banking Commissioner,
Respondent.

BRIEF ON BEHALF OF J. N. PEYTON, COMMISSIONER OF BANKS OF THE STATE OF MINNESOTA, AMICUS CURIAE.

THE LAW.

I. KENTUCKY AND MINNESOTA CASES ARE IN CONFLICT.

In the case here for review Letcher Spicer became insane while in the military service of the United States in the World War. This was in 1918. Since then he has been unable to handle his own affairs. Sam Spicer, under order of appointment of the Breathitt County Court, State of Kentucky, has been

acting as the guardian and committee for the incompetent. On May 5, 1930, Sam Spicer, as such guardian and committee, had on deposit in the Hargis Bank & Trust Company, a banking institution located at Jackson in Breathitt County, Kentucky, some $6,070.00 paid to him as such guardian and committee by the Director of the United States Veterans' Bureau as compensation and war risk insurance due his ward under the provisions of the World War Veterans' Act of 1924. On that day this bank failed and was taken over by the Banking Department of the State of Kentucky for liquidation purposes. J. Bryan Smith, Special Deputy Banking Commissioner, was placed in charge. Sam Spicer, as such guardian and committee, filed a claim for the $6,070.00, asserting that the claim should be allowed as a preferred one. Ultimately, right of preference was denied by the Court of Appeals of the State of Kentucky.

The Minnesota Supreme Court, on similar facts, has reached a conclusion directly opposite to that of the Kentucky Court.

In Minnesota, the Commissioner of Banks, appointed by the Governor of the State, has charge of the liquidation of all state banks, closed by reason of insolvency. Mason's Minn. Statutes, 1927, Secs. 5323, 7688, 7689 and 7690. His jurisdiction is exclusive, and his decision as to claims and all other matters are conclusive and not reversable by the courts unless arbitrary or contrary to law.

Northwestern Fuel Co. v. Live Stock State Bank, 182 Minn. 276, 234 N. W. 304;

Hoff v. First State Bank, 174 Minn. 36, 218 N. W. 238;

American State Bank v. Jones, 184 Minn. 498, 239 N. W. 144.

In the liquidation of the Olivia State Bank of Olivia, Minnesota, facts developed identical with those involved in the Ken-

tucky case. Edward Snicker, a World War Veteran, became insane. It was determined by the Veterans' Bureau that he was entitled to receive compensation and war risk insurance payments under the World War Veterans' Act 1924. The probate court of the county of Edward Snicker's residence appointed Lars K. Anderson his guardian. The Olivia State Bank closed its doors on June 5, 1931, and on that day the Commissioner took the institution over for liquidation purposes. At the time of the closing, the guardian had on deposit $374.21, proceeds of war risk insurance, and $975.87, proceeds of compensation. The guardian filed a claim with the Commissioner covering these proceeds, asserting that the same was entitled to preference. The Commissioner denied preference, allowing the claim as a general one. The Minnesota Supreme Court overruled the decision of the Commissioner, holding the claim entitled to preference. Anderson v. Olivia State Bank, et al., ... Minn. ..., 243, N. W. 398.

2. Interest of Commissioner of Banks of Minnesota in controversy.

The Commissioner feels that the Minnesota Supreme Court erred in its ruling that such claim was entitled to preference. He feels that the decision of the Kentucky Court is the correct one. He is called upon almost daily to pass on claims of this kind, and he is therefore vitally interested in the ultimate outcome of this litigation. This brief, amicus curiae, is submitted on his behalf.

3. PAYMENT TO A GUARDIAN IS PAYMENT TO INCOMPETENT BENEFICIARY AND DISCHARGES OBLIGATION OF THE UNITED STATES WITH RESPECT TO SUCH PAYMENT; CLAIM OF GUARDIAN ON ACCOUNT OF MONEYS DEPOSITED IN FAILED BANK GENERAL ONE AND NOT ENTITLED TO PREFERENCE.

Referring to the case under review, it seems to us that when the United States paid the $6,070.00 to Sam Spicer, as guardian, it made payment to Letcher Spicer, the incompetent. It parted with control of the money; it had nothing more to do with it. The money passed to the guardian and his possession of it was the possession of the incompetent, subject to the law and orders of the appointing court with respect to the handling thereof. Upon paying the money to the guardian, the control of the money passed from the United States acting through the Veterans' Bureau and the Director thereof to the State of Kentucky, acting through its county court and the guardian appointed thereby. When Sam Spicer placed the money in the bank the relation of debtor and creditor arose; and upon failure of the bank and its liquidation, Sam Spicer had a claim against the bank the same as anyone else having a general deposit therein at the time of closing. His status was that of general creditor and as such he was entitled to share in the assets of the bank along with the other general creditors. He was entitled to nothing more. The Kentucky Court was right in so holding.

Payments to Sam Spicer as guardian constituted payments to Letcher Spicer, the incompetent, and discharged the obligation of the United States to the incompetent to the extent of the payments made; this on the elementary proposition that payment of money due an incompetent to his guardian constitutes payment to the incompetent and discharges the debt.

Lamar v. Miscow, 112 U. S. 452, 28 L. Ed. 751, 5 S. Ct. 221;

Taylor et al., v. Bemiss, 110 U. S. 42, 28 L. Ed. 64, 3 S. Ct. 441;

Maclay v. The Equitable Life Insurance Society of the United States, 152 U. S. 499, 38 L. Ed. 528, 14 S. Ct. 678;
28 C. J. 1128, 1130 and 1131;
12 R. C. L. 1123 and 1125;
21 R. C. L. 29.

4. THEORY THAT MONEY PAID A GUARDIAN CONTINUES MONEY OF THE UNITED STATES UNTIL DEVOTED TO USE OF INCOMPETENT BENEFICIARY ERRONEOUS:

(1) *No express provision in law to this effect,*

(2) *No language in law justifying implication of intention to this effect.*

(3) *Language of the Act clearly negatives such intention,*

But it is urged that payment of compensation and war risk insurance to the guardian of an incompetent beneficiary differs from the ordinary situation; that the guardian is but the agent of the United States, and payment to him does not constitute payment to the beneficiary; that the money in the possession of the guardian constitutes money of the United States until finally devoted to the use of the beneficiary. From all this it is argued that when a guardian has war risk and compensation moneys in a bank at the time it fails, the claim arising by reason of the deposit is entitled to preference because the moneys are moneys of the United States. Debts due the United States are entitled to preference under R. S. Sec. 3466.

State ex rel. Spillman v. First State Bank, 121 Neb. 515, 237 N. W. 623;

State ex rel. Sorenson v. Security Bank, 121 Neb. 521, 237 N. W. 620;

Butler v. Cantley (Mo. App.), 47 S. W. (2d.) 258;

Anderson v. Olivia State Bank, .. Minn. ..., 243 N. W. 398.

It is the general rule as stated by the Court of Appeals of the State of Kentucky in the instant case that deposits made by a guardian of an incompetent are not entitled to preference simply because they are deposits of a guardian. This leaves as the sole question—are the moneys funds of the United States, or in other words, is the guardian the agent of the United States in the transaction?

This question has been answered in the negative by courts other than the Kentucky Court. We refer to the cases of:

Shippee v. Commercial Trust Company (Conn.), 161 Atl. 775;

State ex rel. Smith v. Shawnee County Commissioners, 132 Kan. 233, 294 Pac. 915 (1931, Certiorari denied, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 648);

Puffenbarger v. Charter, ... W. Va. ...., 165 S. E. 541.

No provision can be found in the World War Veterans' Act 1924 as amended, expressly making the guardian of an incompetent beneficiary the agent of the United States for the handling of such incompetent's compensation and war risk moneys. This must be conceded. Are there provisions in the legislation showing intention that the guardian should be such agent? Analysis of the legislation demonstrates, it seems to us, a total absence of any such provision, a total absence of any provision reasonably tending to show any such intention. The views of those claiming such intention are well summarized in the dissenting opinion in the case of Shippee v. Commercial Trust Company, supra, as follows:

> "This money was paid to the guardian Callery under the World War Veterans' Act of 1924 (June 27, 1924) c. 320, appearing in title 38, U. S. C. A., Sec. 421 et seq., p. 193. Section 434 of title 38 makes the Director of the Veterans' Bureau responsible 'for the proper examination, medical

> care, treatment, hospitalization, dispensary and convalescent care, * * *', etc., and other service necessary for the pensioner. Section 450 of title 38, U. S. C. A., provides among other things that the payment of the pension money 'may be made' to a conservator or guardian who has been appointed by the State wherein the ward is domiciled, and if he fails to render accountings to the director showing the application of the money for the benefit of the pensioner, the director, in his discretion, may suspend such payment to the guardian. It is also there provided that such payments of pension money as have not been turned over to the institution in which the incompetent pensioner may be an inmate, may be held in the treasury to the credit of the pensioner and may be disbursed by the director in his discretion. Pension money which has been paid to a guardian, which might otherwise escheat to the state under a state law, shall be returned to the United States by the guardian to be credited to current appropriations for payments of compensation insurance. Under Section 556 of title 38, U. S. C. A., a guardian is criminally liable to the United States for misuse of the pension money in his hands. I think it is apparent that Congress intended to prevent pension moneys of the United States donated by it for the care and support of its wards, from being appropriated to any other purpose before that care and support is actually given, or, if competent, the money paid into his hands."

In the majority opinion the Court recognizes that the sections of the law, referred to in the dissenting opinion, and other analagous sections evidence the solicitude of the congress for the welfare of the veteran who has become mentally incompetent to manage his own affairs, and an intention to safeguard the payment to him of the compensation and disability benefits to which he is entitled, so that they should not be dissipated or the veteran deprived in any way of their full benefit, but in this connection says:

> "We do not, however, find in that act any intention, express or implied, that the title to the moneys payable to him is to remain in the United States after they have been paid over to his conservator, and until they have been actually paid into the hands of the ward, or disbursed for his benefit. We find no justification in the act for the claim that the conservator acts as the agent of the government through whom the funds are paid to his ward."

We feel that the majority opinion correctly states the situation.

In addition to this, it seems to us that the provisions of the legislation show, rather than intention of agency so far as the guardian is concerned, recognition on the part of the congress that upon payment to the guardian title to and all control over the money passes from the United States, title to the incompetent, with right of possession in his guardian, and control to the state through its court having jurisdiction of the guardianship. Let us consider this suggestion for a moment.

Sec. 21, Chap. 320, World War Veterans' Act 1924, (38 U. S. C. A. Sec. 450), as amended, provides that where a payment is due an insane beneficiary, such payment "may be made" to the person who is constituted the guardian of such beneficiary by the laws of the state of his residence. "May" as here used means "shall", that is, with respect to payments, where there is a duly appointed, qualified and acting guardian, up to the time of suspension of payments to the guardian as later on provided in this section. There is no escape from this, for no provision is made anywhere in the act for payment, in case of an insane beneficiary, to anyone other than such guardian, except where payment thereto is so suspended. Payments must be made to the guardian until such suspension. What control does the law give to the Veterans' Bureau or its Director, with respect to payments made to a guardian? None

whatever. That no such control was intended to be conferred is made evident beyond dispute by the provisions of this same section that "whenever it appears that any guardian * * * is not, in the opinion of the director, properly executing the duties of his trust or has collected or is attempting to collect fees, commissions, or allowances that are inequitable or are in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then and in that event the director is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary and make proper presentation of such matters to the court * * *." This language clearly indicates the intention of the Congress that where there is a guardian, payments must be made to such guardian until there is suspension of payments as provided by the language: "Provided that the director in his discretion may suspend payments to any such guardian * * * who shall neglect or refuse, after seasonable notice, to render an account to the director from time to time showing the application of such payments for the benefit of such minor or incompetent beneficiary." But the language does more. It shows beyond any question, it seems to us, recognition on the part of the Congress that payments to a guardian place the moneys covered by such payments beyond the reach and control of the United States acting through the Veterans' Bureau and the director thereof; in other words, that payments to a guardian pass title to the funds to the incompetent beneficiary, possession to the guardian for the benefit of such beneficiary, and control to the state acting through the court having jurisdiction of the guardianship. Payment to the guardian constitutes payment to the incompetent beneficiary. If this were not the understanding of the

Congress, why did the Congress see fit to confer express power upon the director to appear in the court having jurisdiction of the guardianship for the purpose of presenting to such court facts as to the conduct of the guardian with respect to the handling of payments made to him? If it be true that it was the intention of the Congress, upon payments being made to the guardian, that title to the funds was to remain in the United States, there would have been no occasion for conferring such power on the Director. If it had been the thought of the Congress that title was to remain in the United States, a provision of this kind would not have been inserted in the law, for such a provision is absolutely inconsistent with such a thought and therefore entirely out of place. Title being in the United States and the guardian being its agent, power to resort to the court of appointment for any purpose would not have been provided, for the matter of control of the guardian and the funds and whether the guardian should be discharged on the basis of certain facts would be something wholly within the jurisdiction of the United States acting through the Veterans' Bureau and its Director. But the law does not provide for any such control. It gives no power to the director to require the guardian to return unexpended funds; no power to discharge, if dissatisfied with him. It seems to us quite manifest that if it had been the intention of the Congress that the funds paid to the guardian should remain funds of the United States until actually devoted to the use of the incompetent beneficiary, Congress would have inserted provisions in the law giving the director, in case of dissatisfaction with the guardian, power to call upon such guardian to return unexpended funds, and thereupon to dispense with his services. Certainly provisions of this kind would have been inserted in the law if it had been the thought of the Congress that guardians

in the handling of the funds in question were to be and constitute agents of the United States. What does Congress do? It simply gives the director power to appear in court and present facts with respect to the conduct of the guardian. That is all. It is left for the court having jurisdiction of the guardianship to determine what is to be done with respect to the guardian, based on the facts so presented. The director is powerless to do anything subject to the single exception that he may suspend payments to the guardian where the guardian neglects, after reasonable notice, to render an account to the director from time to time showing the application of payments for the benefit of the incompetent beneficiary. It seems to us that there is here unmistakable recognition by the Congress that its enactment provides for payments to the guardian of an incompetent beneficiary and that upon payments being made to him the funds pass beyond the control of the United States. The Congress makes no provision for continued control by the Bureau or its director after payments are made to the guardian, that is, with respect to such payments; it is only as to payments made in the future, that is, payments made after the suspension by the director of payments to the guardian that control with respect to payments is given to the director. The Congress gave the power to the director to appear in court and present the facts as to the conduct of the guardian with respect to the handling of the funds and stopped there, manifestly because it was intended that as to a guardian and payments already made to him the court having jurisdiction of the guardianship was to have full and exclusive control.

The Court, in Puffenbarger v. Charter, Banking Commissioner et al., supra, after referring to the sections of the law having reference to suspension of payments to a guardian by

the director and embezzlement of funds by a guardian, relied upon, as the court states, by the Nebraska and Iowa courts, very well says:

> "Amendments to Section 450, made in 1928 and 1930 (38 U. S. C. A. #450), detail meticulously how suspended payments in the hands of the director shall be disposed of; but nowhere in the federal enactment is any specific provision whatever for federal control over or recovery of the payments theretofore made a guardian, except in case of escheat. To the contrary, the director is empowered only to 'make proper presentation' to the court which appointed the guardian, if the latter is not 'properly executing the duties of his trust.' This limitation of the powers of the director is inconsistent with the theory of federal control over the guardian or over the money after payment to him."

As bearing on the intention of the Congress it is significant that the law contains no provision requiring the guardian to give a bond; no provision requiring the guardian to return funds to the United States upon demand of the Veterans' Bureau or its director; no provision giving the Veterans' Bureau or its director authority to demand the return of such funds; no provision giving the Veterans' Bureau or its director any power or control or direction over funds after they are paid to the guardian. Certainly, if it had been in the mind of the Congress that funds paid to a guardian were to continue funds of the United States until actually devoted to the use of the incompetent beneficiary, and that the guardian was to be the agent of the United States until then, some such provisions would have been inserted in the law. The absence thereof shows unmistakably that it was never the intention that upon payment to a guardian, the relationship of agency was to arise as between the United States and the guardian. Such absence shows intention directly contrary to this, an

intention that upon payment to a guardian the usual, ordinary and well understood thing was to happen. The United States was to be relieved of its liability to the incompetent beneficiary to the extent of the payment. The moneys were to be transferred to the guardian for handling for the incompetent beneficiary, the same as other assets of the ward coming into the possession of the guardian.

So, it seems to us, that those courts holding the claim of a guardian against a failed bank to be entitled to preference on the theory that the claim is that of the United States, the guardian being simply the agent of the United States, pretty well blind themselves to the wording of the law and what that wording may legitimately be said to show by way of intention. A fair reading of the law permits no such construction as these courts place thereon. Their decisions, if left to stand, will, it seems to us, constitute nothing less than usurpation of legislative functions.

II.

PRACTICAL CONSIDERATIONS.

As heretofore pointed out, the cases holding that veteran's compensation and war risk insurance funds deposited by a guardian of the veterans in a bank are entitled to priority of payment upon the bank becoming insolvent all proceed on the theory and are based on the doctrine that such funds are funds of the United States, and as such are entitled to preference under a statute giving debts due the United States priority over other indebtedness.

Not only is such doctrine unwarranted in law, but the consequences of its approval would be disastrous and far-reaching.

To this end the following practical phases of the situation

involved in sustaining the doctrine of preference are submitted for the consideration of the Court:

1. Guardianship involves mental incapacity rather than physical. Under the doctrine of priority of payment the funds of a veteran sound in body but mentally incompetent and under guardianship are preferred while those of a veteran sound in mind but physically incapacitated are not. If Congress had any thought of priority of payment being essential to the accomplishment of its purpose, would it have allowed the one to be protected and the other not? Consideration of such fact shows clearly the absence of any intent on the part of Congress to bring about the result contended for by the Appellant herein.

2. The veteran's guardian is appointed by the state court. Such court controls his actions. The guardian's bond, in Minnesota, runs to the Judge of Probate, and his successors in office and may be prosecuted by leave of said court in the name and for the benefit of any person interested.

Mason's Minnesota Statutes 1927, Sec. 8912.

The bond protects the ward against any misappropriation or misapplication of *his* funds. If the money deposited in a bank is money of the United States and not of the ward, the question naturally arises, what protection has the United States against embezzlement or misapplication of such funds by the guardian? If the guardian embezzles the money if it has not become the property of a ward, can the latter demand payment anew from the United States? Also, in such a case what recourse has the United States, if any, against the sureties on the guardian's bond.

3. What of divided control? The guardian is responsible to the Probate Court subject to its order. If this is money of the United States and not of the ward what right of control

has the Probate Court over it? Can the guardian spend this money without accounting to the Probate Court or court of his appointment? Is he accountable only to the United States and if so, to what branch or governmental subdivision thereof? The Probate Court clearly has jurisdiction only over property of its ward. If this money is property of the United States for one purpose it must be for all. There can be no such thing as title in the United States for one purpose and in the ward for another.

4. During the last five years thousands of banks have failed throughout the United States. In Minnesota 236 state banks have closed their doors. The affairs of many of the banks have been completely liquidated and final dividends paid. In others, partial dividends have been paid. Hundreds of claims by guardians of veterans for funds arising out of Federal compensation have been filed, allowed and paid as general claims.

Since the decision in—

Anderson vs. Olivia State Bank (supra),

a definite campaign has been inaugurated by those interested in veterans to have their guardians refile their claims as preferred claims. As a practical matter the situation while disturbing is perhaps not so serious so far as the Commissioner of Banks of Minnesota acting as liquidator is concerned where there still remain funds on hand to pay such claims in full if they are filed promptly as in the case of where the funds have all been distributed.

What is to be done in the following situations:

(a) Where the bank has been completely liquidated or liquidated to the extent that the funds remaining are insufficient to pay such claims in full.

Ordinarily the claimant would be estopped from disturbing the distribution already made in reliance upon the claim having been filed as a general claim.

But if this money is that of the United States, a different rule may apply. In such case under well settled rules estoppel can be set up as a defense only when the Government is acting in its proprietary rather than in its sovereign capacity.

In the case of—

Birmingham vs. United States, C. C. A. 8th Circuit, 4 Fed. (2d) 508

and

Sternfield vs. United States (Dis. Ct.) 32 Fed. (2) 789

it was held that the Government in devising and putting into effect its plan of war risk insurance was not acting in a proprietary capacity and that estoppel could not be asserted against it in attempting to enforce insurance under the Act.

In the case of—

McIntosh vs. Dill, 205 Pac. (Okla.) 917

it was held that the United States in acting as guardian for Indians was performing an act sovereign in scope.

The above are referred to not as attempting to brief a question not before the Court for specific determination but to illustrate that the suggested difficulties are not imaginary.

If the money is that of the United States, if no estoppel exists, can the United States sue to recover the difference between the amount paid and the full amount of its claim, and if so, who should it sue?—the guardian for failure to file a preferred claim, or the creditors who have thus received more than their share, or the liquidator of the bank, in Minnesota, the Commissioner of Banking.

The situation if the decision of the Court of Appeals of Kentucky is reversed will be prolific of litigation.

(b) Where the bank is still in process of liquidation and some funds remain to be distributed.

In such case must all distribution cease until the liquidator can ascertain what general claims involve veteran's compensation and war risk insurance funds and if he errs in his investigation who is liable?

The statutes of Minnesota and other states provide an orderly procedure for notice of the time within which claims must be filed, a time limit for the filing of claims, allowance or disallowance by the Commissioner of Banks as liquidator and finally a review by the courts in case of dispute.

If the United States is acting in its sovereign capacity will notice to the guardian of time to file claims, his action in filing a general instead of a preferred claim as to such part of the funds as arise from veteran's compensation or war risk moneys be binding on the United States?—and if not, when can any funds of any bank be finally distributed?

No one desires to see veteran's compensation and war risk insurance funds dissipated or diverted by bank failures or otherwise from the object for which they are paid.

Opposed to the above difficulties which involve and will involve the war veteran in litigation, delay in liquidation of closed banks and distribution of funds to depositors, there is a simple and easy method of procedure, one approved by the Supreme Court of Minnesota, and strange though it may seem, not referred to in the opinion of the Court in the case of—

Anderson vs. Olivia State Bank, supra,

though its basic reasoning is absolutely inconsistent with that in the Anderson case, namely, that the funds are property of the United States and not of the ward.

In the case of—

Snicker vs. Byers, 176 Minn. 541; 224 N. W. 152,

Edward Snicker was an incompetent and under guardianship in the Probate Court of Renville County. He served in the World War and had compensation for disability coming to him from the Federal Government. Compensation was paid to his guardian and deposited by the latter in banks in his name as guardian. The Probate Court of Renville County made an order requiring all guardians in proceedings pending in that court who had money of their wards deposited in banks to require special bonds from such banks to secure the repayment of such deposits, otherwise to withdraw such deposits. This order was communicated to Snicker's guardian and made known to the officers of the banks with whom he had funds on deposit as such guardian. One of the banks gave such a bond which was delivered to the Judge of Probate, approved by him and filed in the guardianship proceedings. Thereupon the guardian withdrew the funds he had on deposit with other banks and transferred them to the bank which had given the bond and thereafter continued to deposit funds received from the Federal Government in such bank. The bank failed and being a national bank was taken over by the Comptroller of Currency and liquidated. The guardian had on deposit in the bank some $7,000 of Federal compensation. Demand for payment was made on the sureties on the bond and payment not being made suit was brought thereon. The defense was that the bond was not authorized by any statute and that the Judge of Probate had no authority to require it and the bond for that reason was null and void and that there was no consideration for it. The Court after carefully considering the question and stating that the jurisdiction of the Probate Court embraces all of the ward's property and affairs and includes the care and

protection of the estate of the wards, held that it was within the broad power of the Court to take steps which it might deem to be for the best interests of the ward even where no procedure therefor was prescribed by statute and that the order made requiring guardians to file bonds for money on deposit in banks was valid, reasonable and proper. If the money in question was not the property of the ward and was not part of his estate, it is clear that the Court would have had to have reached a different conclusion but being property of the ward and being subject to the control and jurisdiction of the Probate Court it was held that the latter could properly protect the interests of the ward by demanding a bond.

As stated, the basis of this decision is deemed to be directly contra to the basis upon which the decision in the case of Anderson vs. Olivia State Bank was decided.

Either the money was the property of the ward or the property of the United States. If of the latter, the Court had no jurisdiction over it. However, be that as it may this decision shows clearly the proper basis for protecting the funds of war veterans deposited in banks, namely: the Probate or other Court having jurisdiction over the guardian has but to issue its order as did the Renville County Probate Court requiring as a condition precedent to the deposit of such funds the giving of a bond with adequate sureties protecting against loss due to failure or closing of the bank, and the veteran will be assured adequate protection, the liquidator of a closed bank will not be hampered or delayed in the distribution of funds to depositors and the United States will not become involved in possible claims and litigation.

For the reasons hereinbefore set forth, it is respectfully suggested that the decision of the Court of Appeals of the State of Kenutcky should be affirmed.

Respectfully submitted,

WILLIAM H. OPPENHEIMER,
FRANK C. HODGSON,
MONTREVILLE J. BROWN,
Special Counsel for J. N. Peyton,
Commissioner of Banks of the
State of Minnesota,
W-1781 First Nat. Bk Bldg.,
Saint Paul, Minnesota.